

# Independent Human Rights Act Review (IHRAR)'s Call for Evidence

## Response from the Scottish Youth Parliament 2021



### Introduction

The United Nations Convention on the Rights of the Child (UNCRC) is the basis for the [Scottish Youth Parliament's](#) (SYP's) vision, mission, and values. In particular, SYP embodies Article 12 of the UNCRC, which states that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led charity, the words and sentiment of Article 12 have profound importance for our work.

### Our Vision

The Scottish Youth Parliament (SYP) is the democratic voice of Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its young people. Our goal is to make this vision a reality, in order to ensure young people in Scotland grow up loved, safe and respected, and able to realise their full potential.

### Our Mission

SYP is a rights-based charity, with members supported by all of Scotland's 32 local authorities and 11 National Voluntary Organisations.

SYP's mission is to provide a national platform for young people to discuss the issues that are important to them, and campaign for changes to the nation that they live in. We support our members in their work by training them, supporting their personal development, and empowering them by using a youth work ethos.

Our democratically elected members listen to and recognise the issues that are most important to young people in every community across the country and ensure that decision-makers listen to their voices.

### Our Values

- **Democracy** - We are youth-led and accountable to young people aged 14 to 25. Our democratic structure and the scale of our engagement across Scotland give us a mandate that sets us apart from other organisations.
- **Rights** - We are a rights-based organisation. We are passionate about making young people aware of their rights and ensuring that local and national governments uphold their rights.
- **Inclusion and Diversity** - We are committed to being truly inclusive and work tirelessly to ensure policymakers and politicians hear the voices of young people from every community and background in Scotland.

- **Political Impartiality** - We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we deliver the policies that are most important to young people.

## Our approach

SYP welcomes the opportunity to respond to the Call for Evidence on the Independent Human Rights Act Review (IHRAR).

This youth-led response has been reviewed, amended, and approved by SYP's 2020/21 [Conveners Group](#) (a group of ten democratically elected young people who lead on policy and campaigning at SYP). Our membership represents young people aged 12-25, SYP's response is not representative of children below the age of 12, or adults over 26.

This response has been created using existing SYP policy and research. Primarily, the views within this paper have been taken from SYP's response to the Scottish Government's consultation on incorporating the UNCRC into Scots Law.

Our UNCRC response was created through a Discussion Day with Members of the Scottish Youth Parliament (MSYPs), where we first built up capacity on the complex topic of incorporating international human rights conventions, before gathering their views on the topic. We believe that young people's comments on the role of courts in relation to the UNCRC are reflective of their stance on wider human rights laws and are therefore pertinent to this inquiry.

The Discussion Day, which took place on 16th July 2019, was attended by 43 MSYPs from 23 local authorities including representatives from Orkney and the Shetland Islands, and 9 of our 11 National Voluntary Organisations. These included LGBT Youth Scotland, Haggeye, Carers Trust and Who Cares? Scotland.

The majority of attendees were 14-18 years-old (84%) and the remaining 16% were aged 19-23. There were slightly more female MSYPs (around 58%) than male MSYPs (around 42%) present.

While most attendees were still at school (around 56%), the young people present were also at College, University, in part-time or full-time work and apprenticeships/training, with a few unemployed.

To find out more details of our approach to the Discussion Day, see [here](#).

<sup>1</sup>

### Key SYP Policy

*Human rights and civil liberties should be strongly protected by law.*

- SYP 2016-21 'Lead the Way' Manifesto commitment, passed with 82% support.

## Theme 1: the relationship between UK courts and the European Court of Human Rights (ECtHR)

<sup>1</sup> Our *Lead the Way* manifesto consultation received 72,744 responses from young people.

When considering what aids should use when interpreting the UNCRC, MSYPs expressed a desire for courts to have due regard for a wide range of sources including:

- UNCRC General Comments
- UNCRC Concluding Observations
- Opinions made in relation to Optional Protocol 3 of the UNCRC
- Reports resulting from UNCRC Days of General Discussion,
- comparative law and court rulings
- Decisions made under other international treaty regimes.

MSYPs told us that communications from the UN Committee on the Rights of the Child were important when using or making laws in Scotland. We concluded that these should be guiding for duty-bearers to consider them. They provide respected guidance which will help duty-bearers and rights-holders to better understand UNCRC rights.

**MSYPs told us that...**

“We like the idea of international scrutiny and a higher body should be reviewing how we are doing.”

“They are rights experts and international communication is important. We are sure what they’re saying will fit in Scotland.”

“While optimistically Scotland should be moving towards the goals set by the UNCRC, to be realistic, Scotland should have some wiggle room. This will give flexibility and keep things relevant to Scotland.”

*Anonymous notes from the Discussion Day*

MSYPs also told us that courts should use what the UN’s Human Rights Council says when applying UNCRC rights.

**MSYPs told us that...**

“Because they are experts, they know what they are talking about, and an objective stance is needed.”

“It’s important to keep issues up to date.”

- *Anonymous notes from the Discussion Day*

Furthermore, we specifically noted in our UNCRC response that it should include decisions made under other international treaty regimes such as the ECHR, and principles of these such as the ‘margin of appreciation’ - discretion to the will of Scotland.

With the strong support for international jurisprudence in the case of the UNCRC, it is fair to assert that MSYPs believe the duty to “take into account” ECtHR jurisprudence to be an essential part of the HRA.

For this reason, we agree with our partners, such as the Scottish Human Rights Consortium, and recommend that the panel recommend no change to Section 2 of the HRA.

### **Theme 2: Impact of the HRA on the relationship between the judiciary, the executive, and the legislature**

Whilst our civil society partners are better placed to comment on the strengths and weaknesses of the current approach (we refer the review to the evidence submitted by the Scottish Human Rights Consortium), we can comment on MSYPs views on sections 3 and 4 of the HRA.

When we asked MSYPs what elements of the HRA they would like to see within UNCRC incorporation legislation, they highlighted various sections including:

- The UNCRC must trump any law or policy in Scotland which has less children's rights protection. (Like interpretation duty, Section 3 HRA)

"As we have ratified the convention, it should trump lesser laws - international gold standard."

- *Anonymous notes from the Discussion Day*

- Judges must apply law and policy in a way which protects UNCRC rights. (Like interpretation duty, Section 3 HRA)
- Judges have the power to declare that a law, policy, or practice does not respect UNCRC rights. (Like declaration of incompatibility, Section 4 HRA)

"Because this has been tried and tested with the Human Rights Act."

"This must be followed up by action to change things. It signals commitment and that they are taking rights seriously."

"Judges need to be able to do this, this is their responsibility in society. The judiciary should have that role of protecting rights."

- *Anonymous notes from the Discussion Day*

Whilst a 'strike down' power was ultimately deemed to be out with the Scottish Parliament's legislative competence, MSYPs were strong in their assertion of how valuable they felt this provision would be to UNCRC incorporation:

"Simplicity is not an excuse for not allowing it (a strike down power)."

"There is no point in incorporating if we don't have this."

"Rights are not divisible and it should not be up to decision makers to tamper with them."

*Anonymous notes from the Discussion Day*

From this, it is clear that MSYPs believe sections 3 and 4 were essential to a strong human rights law. They did not raise concerns around these provisions but instead called for this framework to be copied in the UNCRC (Incorporation)(Scotland) Bill. In calling for these sections to be part of a new piece of human rights legislation, MSYPs demonstrate their belief that the current role of courts in the HRA, in balance with Government and Parliament, is fit for purpose.

These calls were echoed by partners across civil society during the UNCRC consultation process, as well as in response to the First Minister's Advisory Group on Human Rights Leadership on a new human rights law for Scotland.

With this in mind, we recommend that **no change is made to Articles 3 and 4 of the HRA.**

## **Conclusion**

From the discussions we've held with MSYPs around these provisions in the HRA and on whether they should be used as a template for the UNCRC Bill, we can conclude that our membership is happy with how the Act is operating in the areas this Bill is concerned with. We therefore recommend no changes are made to sections 2, 3 or 4 of the Act.

We would also like to highlight Article 12 of the UNCRC, which states that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As children do not have binding UNCRC protections at a UK level, the HRA is essential to securing their access to their human rights.

We therefore believe it is vital that the inquiry seeks to ensure that children and young people's voices are heard in your considerations, including those from seldom-heard groups (who are more likely to face rights breaches). Given the complex and technical nature of this inquiry, we hope that necessary steps will be taken to ensure this is accessible to all, regardless of age or circumstance.

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